

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1481 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPATRAI P THAKKAR

Versus

JEHABHAI MOTIBHAI

Appearance:

MR RA MISHRA for Petitioner

MR JJ SHAH for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 22/07/97

ORAL JUDGEMENT

1. This CRA is directed against an interlocutory application for deciding certain issues under Order 14 as preliminary issues.
2. It appears that in Reg.C.S.No.46/88 filed in the Court of Civil Judge(JD) at Sanand the original defendant

Nos 4 & 5 who are the present petitioners applied to the court that based on the pleadings of the parties the court has already framed issues at Exh.33 and under Order 14 Rule 2 issue Nos 4 & 6 were required to be tried as preliminary issue as the dispute involved between the parties in the suit is decided in earlier proceeding which was culminated by rejection of SLP in the Supreme Court. Secondly, it was claimed that second averment made in the plaint was not clear as to whether on which date and in which year the cause of action has arisen and therefore under Order 7 of the CPC the plaint was as such liable to be rejected. Such application which was given at Exh.39 was rejected by the Civil Judge (JD) Sanand by his judgment and order, dated 11.11.1992 interalia holding that the issues which are framed by the court were mixed issues of law and facts and some evidence was required to be led. The trial court also recorded the finding that the question as to whether the aforesaid issues were barred by resjudicata in view of the findings recorded in earlier proceedings being Reg.CS No.71/82 is also required to be gone into after perusing the plaint of two suits, the written statements of two suits, the issues framed in the earlier proceedings, findings recorded on such issues in the earlier proceedings and as to whether such finding can be said to be directly and substantially in issue in the subsequently instituted suit was required to be examined. Court recorded a prima facie finding that from the averments made in the plaint of the suit as well as the written statements and the issues framed based on such pleadings, the issues in question could not be decided as preliminary issues under Order 14 as the issues were mixed issues of law and facts and such issues can not be tried as preliminary issues.

3. Being aggrieved thereby the present petitioners-original defendant Nos 4 & 5 have preferred the present revision application challenging the legality and validity of the order passed below Exh.39, dated 11.11.1992 by the Civil Judge(JD), Sanand.

4. Mr.Manoj Popat for Mr.R.A.Mishra for petitioner has submitted before this court that from the pleadings of the parties and the certified copy of the suits in the earlier proceedings which culminated with rejection of SLP by the Apex Court the issues in question were required to be framed as preliminary issues as such issues would finally and substantially decide the controversy between the parties which is now sought to be revived in the present suit. He submitted that the controversy between the parties was decided in the earlier proceedings being Reg.C.S.No.71/82 and appeal

preferred to the district court also failed as well as the second appeal preferred in this court also came to be dismissed. He has submitted that though it is true that the present petitioners have purchased the property pending the litigation, it can be said that they are claiming the right under the same title and they can not be said to be the new party. In fact, the controversy is one as to whether the right to sue or right to execute the decrees passed in the earlier proceedings is lawfully assigned to the subsequent transferee and it is a question which is a moot question of law and which is gone into by the Full Bench of this court. The trial court was therefore fully justified in rejecting the application for framing the aforesaid issues as preliminary issues and hence I do not see any jurisdictional error which would call for interference of this court under section 115 of C.P.C. In the result, this CRA fails and same is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No costs.

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